

FEB 10 2012

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

POM WONDERFUL LLC, a Delaware
limited liability company,

Plaintiff - Appellant,

v.

WELCH FOODS, INC., a Michigan
corporation,

Defendant - Appellee.

No. 10-56791

D.C. No. 2:09-cv-00567-AHM-
AGR

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
A. Howard Matz, District Judge, Presiding

Submitted February 8, 2012**
Pasadena, California

Before: D.W. NELSON, O'SCANNLAIN, and N.R. SMITH, Circuit Judges.

Pom Wonderful LLC contends that the district court erred by submitting to
the jury, at the end of the first phase of the bifurcated trial, the fact-of-injury

* This disposition is not appropriate for publication and is not precedent
except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes that this case is suitable for
decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

element of Pom's Lanham Act claim. We disagree. The decision to submit that issue to the jury accorded with the pretrial order bifurcating the trial and was not an abuse of discretion.

Pom also contends that the district court abused its discretion in denying its motion to reopen the trial to submit further evidence on injury. Again, we disagree. The record supports the district court's decision to deny Pom's request. *See Berns v. Pan Am. World Airways, Inc.*, 667 F.2d 826, 829 (9th Cir. 1982). The record likewise supports the district court's decision not to grant Pom a partial new trial.¹

AFFIRMED.

¹ On May 9, 2011, the parties filed a Joint Stipulation Concerning Video Deposition Clips Played at Trial. We construe this submission as a joint motion to supplement the record. So construed, the motion is GRANTED.